

Amended Mock-up for 2019-2020 SB-230 (Caballero (S))

Mock-up based on Version Number 98 - Amended Senate 4/11/19

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. The Legislature finds and declares:

(a) The highest priority of California law enforcement is safeguarding the life, dignity, and liberty of all persons, without prejudice to anyone.

(b) Law enforcement officers shall be guided by the principle of reverence for human life in all investigative, enforcement, and other contacts between officers and members of the public. When officers are called upon to detain or arrest a suspect who is uncooperative or actively resisting, may attempt to flee, poses a danger to others, or poses a danger to themselves, they should consider tactics and techniques that may persuade the suspect to voluntarily comply or may mitigate the need to use a higher level of force to resolve the situation safely.

(c) Vesting officers with the authority to use reasonable force and to protect the public welfare requires monitoring, evaluation, and a careful balancing of all interests.

(d) The authority to use force is a serious responsibility given to peace officers by the people who expect them to exercise that authority judiciously and with respect for human rights, dignity, and life.

(e) The intent of this act is to establish the minimum standard for policies and reporting procedures regarding California law enforcement agencies' use of force. The purpose of these use of force policies is to provide law enforcement agencies with guidance regarding the use and application of force to ensure such applications are used only to effect arrests or lawful detentions, overcome resistance, or bring a situation under legitimate control.

~~(f) The legal standard used to determine the lawfulness of a use of force is the Fourth Amendment to the United States Constitution. The decision of the United States Supreme Court in Graham v. Connor (1989) 490 U.S. 386 states in part, "[t]he reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation" and "the test of reasonableness under the Fourth Amendment is not capable of precise definition or mechanical application."~~

~~(e)~~ (f) No policy can anticipate every conceivable situation or exceptional circumstance which officers may face. In all circumstances, officers are expected to exercise sound judgment and critical decision making when using force options.

~~(h)~~ (g) A law enforcement agency's use of force policies and training may be introduced as evidence in proceedings involving an officer's use of force. The policies and training may be considered as a factor in the totality of circumstances in determining whether the officer acted reasonably but shall not be considered as imposing a legal duty on the officer to act in accordance with such policies and training.

~~(i)~~ (h) Every instance in which a firearm is discharged, including exceptional circumstances, shall be reviewed by the department on a case-by-case basis to evaluate all facts and to determine if the incident is within policy and in accordance with training.

SEC. 2. Chapter 17.4 (commencing with Section 7286) is added to Division 7 of Title 1 of the Government Code, to read:

CHAPTER 17.4. Law Enforcement Use of Force Policies

7286. (a) For the purposes of this section:

(1) "Deadly force" means force reasonably anticipated ~~and intended~~ to create a substantial likelihood of causing death or great bodily injury.

(2) "Feasible" means reasonably capable of being done or carried out under the circumstances to successfully achieve the arrest or lawful objective without increasing risk to the officer or another person.

(3) "Law enforcement agency" means any police department, sheriff's department, district attorney, county probation department, transit agency police department, school district police department, the police department of any campus of the University of California, the California State University, or community college, the Department of the California Highway Patrol, and the Department of Justice.

(b) Each law enforcement agency shall maintain a policy that provides a minimum standard on the use of force. Each agency's policy shall, without limitation, include all of the following:

(1) A requirement that officers utilize de-escalation techniques, crisis intervention tactics, and other alternatives to force when feasible.

(2) A requirement that an officer may only use a level of force that they reasonably believe is proportional to the seriousness of the suspected offense or the reasonably perceived level of actual or threatened resistance.

- (3) A requirement that officers report potential excessive force to a superior officer when present and observing another officer using force that the officer believes to be beyond that which is objectively reasonable under the circumstances based upon the totality of information actually known to the officer.
- (4) Clear and specific guidelines regarding situations in which officers may or may not draw a firearm or point a firearm at a person.
- (5) A requirement that officers consider their surroundings and potential risks to bystanders, to the extent reasonable under the circumstances, before discharging a firearm.
- (6) Procedures for disclosing public records in accordance with Section 832.7.
- (7) Procedures for the filing, investigation, and reporting of citizen complaints regarding use of force incidents.
- (8) A requirement that an officer intercede when present and observing another officer using force that is clearly beyond that which is objectively reasonable under the circumstances taking into account the possibility that other officers may have additional information regarding the threat posed by a subject.
- (9) Comprehensive and specific guidelines regarding approved methods and devices available for the application of force.
- (10) An explicitly stated requirement that officers carry out duties, including use of force, in a manner that is fair and unbiased.
- (11) Comprehensive and specific guidelines for the application of deadly force.
- (12) Comprehensive and detailed requirements for prompt internal reporting and notification regarding a use of force incident, including reporting use of force incidents to the Department of Justice in compliance with Section 12525.2.
- (13) The role of supervisors in the review of use of force applications.
- (14) A requirement that officers promptly procure medical assistance for persons injured in a use of force incident, when reasonable and safe to do so.
- (15) Training standards and requirements relating to demonstrated knowledge and understanding of the law enforcement agency's use of force policy by officers, investigators, and supervisors.
- (16) Training and guidelines regarding vulnerable populations, including, but not limited to, children, elderly persons, people who are pregnant, and people with physical and developmental disabilities.

(17) Comprehensive and specific guidelines under which the discharge of a firearm at or from a moving vehicle may or may not be permitted.

(18) Factors for evaluating and reviewing all use of force incidents.

(19) Minimum entry level and annual hourly training and course titles required to meet the objectives in the use of force policy.

(20) A requirement for the regular review and updating of the policy to reflect developing practices and procedures.

(c) Each law enforcement agency shall make their use of force policy accessible to the public.

(d) This section does not supersede the collective bargaining procedures established pursuant to the Myers-Milius-Brown Act (Chapter 10 (commencing with Section 3500) of Division 4), The Ralph C. Dills Act (Chapter 10.3 (commencing with Section 3512) of Division 4), or the Higher Education Employer-Employee Relations Act (Chapter 12 (commencing with Section 3560) of Division 4).

~~SEC. 3.~~ Section 196 of the Penal Code is amended to read:

~~196.~~ Homicide is justifiable if committed by a peace officer or by an individual acting under the command of a peace officer in the peace officer's aid and assistance, under any of the following circumstances:

~~(a) In obedience to any judgment of a competent court.~~

~~(b) When necessarily committed in overcoming actual resistance to the discharge of a legal duty if the officer reasonably believes the suspect poses an imminent threat of death or serious physical injury to the officer or others.~~

~~(c) When necessarily committed in retaking felons who have been rescued or have escaped, or when necessarily committed in arresting a suspect who is fleeing from justice or resisting arrest, if either of the following are true:~~

~~(1) The officer reasonably believes the escape of the suspect poses a significant threat of death or serious physical injury to the officer or others if apprehension is delayed.~~

~~(2) The officer reasonably believes the fleeing suspect to have committed a felony that threatened or resulted in death or serious bodily harm.~~

~~SEC. 4.~~ SEC. 3. Section 13519.10 is added to the Penal Code, immediately following Section 13519.9, to read:

13519.10. (a) (1) The commission shall implement a course or courses of instruction for the regular and periodic training of law enforcement officers in the use of force and shall also develop uniform, minimum guidelines for adoption and promulgation by California law enforcement agencies for use of force. The guidelines and course of instruction shall stress that the use of force by law enforcement personnel is of important concern to the community and law enforcement and that law enforcement should safeguard life, dignity, and liberty of all persons, without prejudice to anyone. These guidelines shall be a resource for each agency executive to use in the creation of a use of force policy that the agency is encouraged to adopt and promulgate, and that reflects the needs of the agency, the jurisdiction it serves, and the law.

(2) As used in this section, “law enforcement officer” includes any peace officer of a local police or sheriff’s department or the California Highway Patrol, or of any other law enforcement agency authorized by law to use force to effectuate an arrest.

(b) The course or courses of basic training for law enforcement officers and the guidelines shall include all of the following:

- (1) Legal standards for use of force.
- (2) Duty to intercede.
- (3) The reasonable force doctrine.
- (4) Supervisory responsibilities.
- (5) Use of force review and analysis.
- (6) Guidelines for the use of deadly force.
- (7) State required reporting.
- (8) De-escalation and interpersonal communication training, including tactical methods that use time, distance, cover, and concealment, to avoid escalating situations that lead to violence.
- (9) Implicit and explicit bias and cultural competency.
- (10) Skills including de-escalation techniques to effectively, safely, and respectfully interact with people with disabilities or behavioral health issues.
- (11) Use of force scenario training including simulations of low-frequency, high-risk situations and calls for service, shoot-or-don’t-shoot situations, and real-time force option decisionmaking.

(12) Alternatives to the use of deadly force and physical force, so that de-escalation tactics and less lethal alternatives are, where reasonably practical, part of the decision making process leading up to the consideration of deadly force.

(13) Mental health and policing, including bias and stigma.

(14) Using public service, including the rendering of first aid, to provide a positive point of contact between law enforcement officers and community members to increase trust and reduce conflicts.

(c) Law enforcement agencies are encouraged to include, as part of their advanced officer training program, periodic updates and training on use of force. The commission shall assist where possible.

(d) (1) The course or courses of instruction, the learning and performance objectives, the standards for the training, and the guidelines shall be developed by the commission in consultation with appropriate groups and individuals having an interest and expertise in the field on use of force. The groups and individuals shall include, but not be limited to, law enforcement agencies, police academy instructors, subject matter experts, and members of the public.

(2) The commission, in consultation with these groups and individuals, shall review existing training programs to determine the ways in which use of force training may be included as part of ongoing programs.

(e) It is the intent of the Legislature that each law enforcement agency adopt, promulgate, and require regular and periodic training consistent with an agency's specific use of force policy that, at a minimum, complies with the guidelines developed under subdivisions (a) and (b).

SEC. 6. The provisions of this bill shall not become law absent the signing of AB 392 (Weber).

SEC. 5. SEC. 7. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because, in that regard, this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

However, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.